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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

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Rulemaking to Amend Parts 1, 2, 21, and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency Band,)
to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Service)

CC Docket No. 92-297

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REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

Our initial comments in this proceeding demonstrated that any restrictions on cable operators' participation in LMDS are unwarranted. The comments submitted by proponents of these ownership restrictions still fail to make the case that any such measures are necessary or appropriate to serve the public interest. Instead, the advocates of a ban continue to rely on highly speculative and improbable scenarios in an attempt to deny cable the ability to obtain access to spectrum that potentially has a multiplicity of uses. The Commission should not adopt this misguided proposal, a restriction that cannot be squared with the deregulatory, pro-competitive policies adopted by Congress in the 1996 Act.¹

¹ Congress in the Act sought "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition...." H.R. Rep. 104-458, 104th Cong. 2d Sess. 113 (1996).

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DISCUSSION

As described in our initial comments, it is undeniable that the video marketplace is experiencing an explosion of alternatives to cable television for the delivery of multichannel video programming.² Commenters advocating a cable-LMDS cross-ownership ban entirely ignore these developments. They do so in an effort to conjure up theories about why cable operators have the incentive and ability to act in an anticompetitive fashion in bidding for LMDS spectrum. At the same time, they fail to acknowledge that LMDS spectrum may be used by cable operators to bring competition to the non-video marketplace by enhancing cable's ability to compete with telephone companies. Their arguments in support of a proposed restriction on cable's participation in the LMDS marketplace do not withstand scrutiny.

MCI, for example, urges the Commission to restrict cable eligibility "as a means of preventing abuse of incumbent monopoly power until meaningful competition develops."³ WebCel Communications, Inc. ("WebCel") argues that "LMDS eligibility restrictions are in the public interest and necessary to prevent the anticompetitive use of this revolutionary new service by incumbent LECs and cable MSOs."⁴ But, as we noted in our comments, marketplace realities can be relied on to ensure that cable will not waste valuable resources on bidding for LMDS licenses simply to warehouse the spectrum or devote it to less competitive use.⁵

² See, e.g., Comments and Reply Comments of NCTA, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133 (filed July 19, 1996 and August 19, 1996).

³ MCI Comments at 4.

⁴ WebCel Comments at 6.

⁵ NCTA Comments at 3-6.

The presence of this existing competition in the multichannel video programming distribution area also demonstrates the improbability of MCI's related theory that "incumbent LECs and MSOs have monopoly power, and thus have a plain economic incentive to delay or exclude entry and competition".⁶ This argument ignores the fact that cable television already faces direct competition from numerous multichannel video providers throughout the United States. This includes competition from direct broadcast satellites that reach every portion of the country, as well as MMDS, SMATV and telephone company-provided wired service. Thus, a strategy that hinges on spending enormous sums in an auction to acquire LMDS licenses would neither "delay" nor "exclude" competition -- it already is here.

Moreover, as NCTA's comments pointed out,⁷ MCI's argument in favor of keeping cable out of the bidding proves too much. Cable has no more incentive to limit potential competitors than other existing participants in the telecommunications marketplace, including MCI -- which recently invested heavily in DBS. There is no reason to single out cable operators from participating in the auctions for LMDS spectrum on this basis.

MCI and WebCel also urge that cable television should be precluded from investing in wireless technology even to provide non-video services. They ask the Commission to "force" cable operators to deploy "complementary" technologies (such as cable modems/telephony) over their existing networks "before allowing them to acquire additional wireless spectrum for those purposes."⁸ MCI and WebCel present no good reason for this proffered industrial policy. It

⁶ MCI Comments at 4. See also WebCel Comments at 15.

⁷ NCTA Comments at 6-7.

⁸ MCI Comments at 6; WebCel Comments at 22.

surely cannot be based on their claim that cable operators will unfairly compete in non-video services. Cable will be a new entrant with no market power in the non-video market. In this respect, it would be in no different position than any other new entrant. While artificially excluding cable operators from bidding on LMDS spectrum may assist WebCel and MCI in their quest to reduce auction fees, the public ultimately pays the price. Not only will auction revenues likely decrease, but keeping cable out of LMDS may well retard the introduction of competition in the local exchange market, with corresponding detrimental effects on the public.⁹

In addition to potentially denying customers rapid deployment of competitive non-video services, restricting cable to the provision of wired service would be particularly unfair. Wire-based telecommunications providers like the telephone companies already use wireless service to supplement their existing networks in order to compete against cable in the video arena. And numerous other telecommunications providers -- like MCI -- would also remain free to serve their customers' needs through a combination of wired and wireless networks.

Cable operators should be able to fully and fairly compete for customers using the technology that the marketplace -- not government fiat -- determines to be appropriate. And cable operators, just like others, should be free to experiment with wireless services to enhance and expand their capabilities to offer a range of telecommunications services.

⁹ WebCel also asserts that "use of LMDS by either telephone or cable systems to compete for the 'other' service would be equally inconsistent with the public interest, because if the choice is between two competitors or more in the battle to offer broadband services to consumers, regulators should choose methods to maximize the number of competitors. The only way to fashion a real market test for local telephone and cable competition is to ensure that competition is not limited to the two current monopolists." *Id.* at 17. But there are currently numerous competitors to cable television in the video marketplace, in addition to local telephone companies. And it is impossible to ignore that WebCel is trying to limit the number of bidders by its proposal.

CONCLUSION

For the foregoing reasons, and for the reasons stated in our initial comments, the Commission should not adopt a cable-LMDS cross-ownership restriction.

Respectfully submitted,

A handwritten signature in cursive script, reading "Daniel L. Brenner/dls", written over a horizontal line.

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August 22, 1996

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